

REMARKS

Applicants request favorable reconsideration and allowance of the subject application in view of the preceding amendments and the following remarks.

Claims 1-18 remain pending in the application, with claim 1 being the sole independent claim. This application claims benefit to provisional application number 60/393,750, which results in an effective U.S. filing date of July 8, 2002.

The rejection of claims 17-18 technically under 35 USC §112 second paragraph, as being indefinite, is submitted to be obviated by the above amendments. Applicants have attempted to employ more idiomatic English phrases wherever possible, to obviate any questions as to indefiniteness. Reconsideration and withdrawal of the § 112 rejection are respectfully requested.

The rejection of claims 1-4 and 6-18 under 35 USC §103(a) as being unpatentable over Bandyopadhyay (PCT/1N00/00118) in view of “applicants’ admission” is strenuously traversed. The disclosures of that PCT document are equivalent to U.S. Patent No. 6,852,344, which issued on an application filed on July 30, 2002, and also is the subject of one of the Terminal Disclaimers, as noted below. There is no factual predicate of record whatsoever for the Examiner’s assertion that one of ordinary skill should or would be “imbued with at least a reasonable expectation that the growth of cells associated with myeloid leukemia would have been inhibited to some degree”. Claims 1-4 and 6-18 recite specific relationships and define a specific modality to obtain a percentage growth inhibition of specific, identified classes of

cells. The Examiner further has not pointed to any specific “admission” in the present disclosure that is inconsistent with the claims being rejected. The prior art cannot be twisted to reveal discoveries in fact only specified by applicant, with hindsight and by using the present disclosure as the true teaching reference for what selectively should be “imbued”.

Likewise, the alternative rejection of claims 1-18 under 35 USC §103(a) as being unpatentable over Bandyopadhyay (PCT/1N00/00118) in view of Zon et al (USP No. 5,700,927) and Bandyopadhyay et al. (USP Appln. Pub. No. 2003/0229140) is traversed in view of the Terminal Disclaimer over the ‘344 patent, and in view of the remarks in the previous paragraph.

The Examiner has also entered several “obviousness-type” double patenting rejections. Though the specific claims involved are understood as not identical, they are viewed to not be patentably distinct over certain claims found in five copending applications filed by the same applicant.

Claim 1 has been provisionally rejected in view of claims 1 and 3 of the copending ‘344 patent. Claims 1, 4, 6, and 7 have been provisionally rejected in view of each of claim 1 of the copending U.S. Patent No. 7,045,157; claims 21, 22, 24, 25 and 28 of the copending U.S. patent application number 11/222,815; claims 26 and 31-32 of the copending U.S. patent application number 10/338,689; and claims 24, 26 and 28-30 of the copending U.S. patent application number 11/174,545. Applicant obviates all these provisional rejections by the attached, four Terminal Disclaimers which terminally disclaim all claims in the present application over each of the ‘344 and ‘157 patents, and any patent to issue upon the ‘815 and